

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Elaine Lu

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Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANIMAL PROTECTION AND RESCUE
LEAGUE, INC., a California nonprofit
corporation; CORY MAC A'GHOBHAINN, an
individual; LISA KARLAN, an individual; AMY
JEAN DAVIS, an individual; LYANNE
FERNANDEZ, an individual; and ANKUR JAIN,
an individual;

Plaintiffs,

vs.

CITY OF LOS ANGELES, LOS ANGELES
POLICE CAPTAIN PAUL VERNON, LOS
ANGELES POLICE SERGEANT RAINS,
HEBREW DISCOVERY CENTER, NETANEL
LOUIE, and DOES 1-10,

Defendants.

CASE NO. 19STCV24522

**VERIFIED COMPLAINT FOR
DAMAGES, DECLARATORY
RELIEF, AND INJUNCTIVE RELIEF**

[CCP § 1060, Civil Code §§ 51.7, 52.1]

Plaintiffs ANIMAL PROTECTION AND RESCUE LEAGUE, INC., CORY MAC
A'GHOBHAINN, LISA KARLAN, AMY JEAN DAVIS, LYANNE FERNANDEZ, and ANKUR
JAIN, allege as follows against Defendants CITY OF LOS ANGELES, LOS ANGELES POLICE

1 CAPTAIN PAUL VERNON, LOS ANGELES POLICE SERGEANT RAINS, HEBREW DISCOVERY
2 CENTER, NETANEL LOUIE, and DOES 1-10:

3 INTRODUCTION

4 1. Plaintiffs are advocates for the humane treatment of animals who seek to stop the
5 unlawful, cruel, polluting, unsanitary, and dangerous mass killing and discarding of thousands of
6 chickens in the streets of Los Angeles at annual fall events for a religious ritual called Kapparot.

7 2. The Kapparot ritual involves saying a prayer while holding either a bag of coins or a
8 chicken, either one of which would then be donated to feed the poor as the ritual has been practiced
9 historically. However, certain entities in Los Angeles instead kill and discard chickens for Kapparot
10 participants. Los Angeles Sanitation then sends trucks out to pick up and dispose of the thousands of
11 discarded carcasses at taxpayer expense.

12 3. It is against the law in California to intentionally kill animals unless there is a specific
13 law allowing it. Penal Code §597(a) has since the year 1873 prohibited *all* intentional killing of animals
14 when done “maliciously,” i.e. without legal justification, as that term is defined in Penal Code §7.
15 (*People v. Ah Toon* (1886) 68 Cal. 362, 362-363; *People v. Kernaghan* (1887) 72 Cal. 609, 613, both
16 defining a “malicious” act as “any unlawful and injurious act committed without legal justification.”)

17 4. Specifically with respect to how Penal Code §597 and §7 relate, the first definition of
18 malice in Penal Code § 7(4), “a wish to ‘vex, annoy, or injure another person’...has no place in a statute
19 intended to prohibit cruelty to animals, which section 597 clearly is intended to do.” (*People v. Dunn*
20 (1974) 39 Cal.App.3d 418, 420. at 421.) Rather, the second definition, “intent to do a wrongful act,
21 established either by proof or presumption of law,” is the proper definition to apply to this code section.
22 The “Legislature by no means intended to switch emphasis from the cruelty to animals element to a
23 factor of malice toward the animal’s owner.” (*Id.* at 421.) *Dunn* refers to “the necessity of malice in the
24 second sense of the code definition (Pen. Code , § 7, subd. 4, 2d cl.), ‘an intent to do a wrongful act.’”
25 (*Id.* at 420.).)

26 5. Penal Code §599c provides legal justification for some killing of animals, such as when
27 animals are used for food. However, the Legislature has *not* created an exception to Penal Code §597(a)
28 for killing and discarding animals for religious rituals. Accordingly, such acts violate Penal Code

§597(a) and are illegal when the animals are killed to be discarded rather than used for food.

6. Penal Code §597(a) is a neutral law of general applicability, and thus only requires a rational basis even when applied to conduct motivated by religion. (*Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 523.)

7. Yet, the Los Angeles City Attorney's Office has created a de facto exception to Penal Code §597(a) for some entities to violate the law with impunity due to the religious motivation involved, despite no such exception having been created by the Legislature nor being required by the Constitution.

8. By this action, Plaintiffs seek declaratory and injunctive relief to stop the CITY from creating this unauthorized exception to Penal Code §597(a) for illegal conduct.

9. Plaintiffs also seek damages and injunctive relief for civil rights violations in which Defendants CITY DEFENDANTS used the threat of arrest to stop Plaintiffs from peacefully and lawfully exercising their First Amendment rights to protest the unlawful killings.

10. Besides violating Penal Code §597(a), the practice of harboring, slaughtering, and disposing of thousands of chickens in the streets of Los Angeles gives rise to grave public health risks. Chickens carry, and often spread to people, a number of dangerous and potentially life-threatening diseases including *Enterococcus faecalis*, *Salmonella*, *Campylobacter*, Histoplasmosis, Avian influenza ("bird flu"), and Newcastle disease. Entities providing and killing chickens for Kapparot engage in unregulated and highly unsanitary operations, amounting to an open-aired and unrestricted-access makeshift slaughterhouse.

11. As a result of Defendants' acts and omissions, birds often sit for hours or days in their own and others' fecal waste, handlers typically do not wear gloves or regularly wash their hands, fecal waste and/or blood collects on the ground and is hosed into public streets and storm drains, and hundreds of carcasses are improperly disposed.

12. As entities including HDC illegally harbor, slaughter, and dispose of thousands of chickens each year for Kapparot—breeding a dangerously high level of bacteria and other pathogens, toxins, and bio-hazards—dangerous diseases are ripe for transmission to the public.

13. The acts and omissions complained of herein are not only illegal but dangerous, unsanitary, unsightly, and foul-smelling. The increased likelihood of cross-contamination and

dissemination of biohazards presents serious public health risks. For example:

- a. Blood and fecal matter typically collect in large quantities on the ground until it is hosed off into city sewers and storm drains. From there, it flows into and endangers the Pacific Ocean.
- b. Bloody, dead, and dying chickens are dumped in huge quantities into bags, boxes, and dumpsters, and are ultimately picked up at taxpayer expense by Los Angeles Sanitation to be taken to landfills and other public repositories.
- c. The grossly unsanitary conditions, with fecal matter routinely present on birds, their handlers, and the ground, presents the risk that any number of dangerous diseases will be transmitted to the public.
- d. Offensive odors of bird excrement, blood, and rotting flesh assault the noses of neighbors and others nearby. Neighbors and passersby are often seen to cover their noses in disgust.
- e. The extraordinary shrieks and cries of birds in pain and distress are typically audible hundreds of feet away, which Defendants HDC and LOUIE attempt to mask by blaring loud music. Witnesses refer to these sounds as among the most disturbing they have ever heard.

14. Not only are these practices illegal and a serious public health threat; they also represent a terrible source of misery and suffering for the birds involved and constitute a cascade of violations of the State of California's animal anti-cruelty laws including Penal Code §597. Thus:

- a. Chickens are routinely left confined for hours or days in tiny, cramped cages or windowless cardboard boxes without room to move or even lift their heads.
- b. Cages are frequently stacked on top of one another, with fecal matter dripping through each row and soaking the birds below.
- c. Denied even the comfort of a last meal, the birds are typically starved for hours or days before death.
- d. Because they are trapped in close confinement for hours or days, the birds may peck one another from stress and eat one another's feathers from hunger. As a result of this

behavior and other abuse by their handlers, many birds go to their deaths with open wounds, broken limbs or wings, and huge patches of missing feathers.

e. Chickens about to be killed are typically grabbed roughly from their cages and, while waiting for death, held painfully by the neck, by a limb or wing, or by both wings held painfully behind their backs. The birds routinely shriek in fear and pain.

f. Many birds whose throats are cut do not die right away, but instead are left to die a slow, suffering death in a garbage bag or on a pile of carcasses.

15. Plaintiffs seek declaratory relief that killing and discarding animals, when not using the animals for food, violates Penal Code §597(a).

16. Plaintiffs also seek damages, declaratory, and injunctive relief against Defendants under Cal. Civil Code §§51.7 and 52.1 for violating their civil and constitutional rights with respect to peaceful First Amendment protected speech protesting the illegal killing and discarding of animals described herein.

PARTIES

17. Plaintiff ANIMAL PROTECTION AND RESCUE LEAGUE, INC. (“APRL”) is a California not-for-profit corporation with headquarters in San Diego County California. APRL is beneficially interested in seeing that all animal cruelty laws are enforced.

18. Plaintiff CORY MAC A’GOBHAINN (“MAC A’GOBHAINN”) is an individual residing in the County of Los Angeles.

19. Plaintiff LISA KARLAN (“KARLAN”) is an individual residing in the County of Ventura.

20. Plaintiff LYANNE FERNANDEZ (“FERNANDEZ”) is an individual residing in the County of Los Angeles.

21. Plaintiff ANKUR JAIN (“JAIN”) is an individual residing in the County of San Bernardino.

22. Defendant CITY OF LOS ANGELES (“CITY”) is a charter city in the County of Los Angeles.

23. Defendant LOS ANGELES POLICE CAPTAIN PAUL VERNON (“VERNON”) is a

1 captain with the Los Angeles Police Department in the County of Los Angeles and is named in his
2 individual and official capacities.

3 24. Defendant LOS ANGELES POLICE SERGEANT RAINS (“RAINS”) is a sergeant with
4 the Los Angeles Police Department in the County of Los Angeles and is named in his individual and
5 official capacities.

6 25. Defendants CITY, VERNON, and RAINS are collectively referred to as “City
7 Defendants.”

8 26. Defendant HEBREW DISCOVERY CENTER (“HDC”) is a corporation organized and
9 existing under the laws of California, with headquarters in Los Angeles.

10 27. On information or belief, Defendant NATANEL LOUIE (“LOUIE”) is an individual
11 residing in Los Angeles.

12 28. Defendants HDC and LOUIE are collectively referred to as “HDC Defendants.”

13 29. Plaintiffs do not know the true names and capacities of the defendants named in this
14 action as DOES 1-10, and therefore, sue them under fictitious names. Plaintiffs will request permission
15 to amend this complaint, or substitute the Doe Defendants via a court-approved form, to state the true
16 names and capacities of these fictitiously named Defendants when they ascertain them. Plaintiffs allege
17 that these fictitiously named Defendants are legally responsible in some manner for the acts set forth
18 below, and accordingly, are liable for the relief requested.

19 **JURISDICTION AND VENUE**

20 30. This Court has personal jurisdiction over each of the Defendants because each is domiciled
21 in California.

22 31. This Court has subject matter jurisdiction over the claims asserted herein because relief is
23 sought under Code of Civil Procedure §§ 526 and 1060, and Civil Code §§ 51.7 and 52.1.

24 32. Venue is proper in this county because the acts and omissions upon which this action is
25 based occurred in this county, and on information or belief, all Defendants reside in this county.

26 **STATEMENT OF FACTS**

27 33. On September 16, 2018, Plaintiffs were present at 19819 Ventura Blvd., Woodland Hills,
28 California, where HDC Defendants were illegally killing and discarding chickens for their annual

1 Kapparot event, in violation of, *inter alia*, Penal Code § 597(a), which prohibits intentionally and
2 maliciously killing animals.

3 34. On information or belief, Defendant VERNON was present in the mobile police station
4 trailer set up to protect the illegal event, was in control of the scene, and directed and/or ratified the acts
5 and omissions of City Defendants as alleged herein.

6 35. Plaintiff ANKUR JAIN was leading protest chants such as, “It’s not atonement; It’s
7 violence,” and “There is no excuse for animal abuse.”

8 36. Defendant RAINS took JAIN aside and threatened him with arrest if he continued
9 leading chants, stating that the criteria was whether the chants could be heard at all inside the facility
10 where the chickens were being killed.

11 37. RAINS instructed JAIN that if he made any noise above a conversational volume, even
12 though he was not using any amplified sound, he would be arrested. HDC and LOUIE were again
13 blaring very loud music to cover up the shrieking of the chickens they were killing at the same time, but
14 RAINS was not concerned with the amplified noise coming from Defendants.

15 38. RAINS also took Plaintiff FERNANDEZ aside in the alley behind Hebrew Discovery
16 Center and threatened her with arrest for using a megaphone. One of the officers physically grabbed
17 FERNANDEZ and pulled her aside. RAINS and the other officers then proceeded to threaten
18 FERNANDEZ with arrest and confiscation of her property if she were to use the megaphone at all, at
19 any volume.

20 39. On information or belief, HDC Defendants and/or their agents sprayed some type of
21 liquid at Plaintiffs over the fence in the alley where they were protesting, causing harmful or offensive
22 contact with Plaintiff JAIN in retaliation for Plaintiffs exercising their First Amendment free speech
23 rights and in an effort to force them to stop protesting.

24 40. Plaintiffs timely filed notices of claims with the City of Los Angeles and are now timely
25 bringing suit upon rejection of those claims.

26 **FIRST CAUSE OF ACTION**

27 **Declaratory Relief – CCP §1060**

28 41. Plaintiffs reallege and incorporate by reference the allegations in each of the preceding

1 paragraphs of this Complaint.

2 **Count 1: Penal Code § 302**

3 **(All Plaintiffs against City Defendants)**

4 42. In threatening to arrest Plaintiffs for chanting and/or using any amplified sound, City
5 Defendants relied on Penal Code § 302, which prohibits disturbing a religious meeting.

6 43. *People v. Cruz* (1972) 25 Cal. App. 3d Supp. 1, analyzed Penal Code § 302 and held that
7 to violate the statute, the acts complained of must “substantially” impair the ability to carry on a
8 religious assemblage. “The acts must disturb the assemblage, not just the individuals in it.” (*Id.* at 11.)

9 44. Penal Code § 302 clearly does not apply to peaceful chanting or even amplified sound on
10 a public street or sidewalk, nor could it under the First Amendment. Such acts may disturb individuals
11 attending the Kapparot event, but unless it actually prevents them from carrying out a religious
12 assembly, Penal Code § 302 is not violated.

13 45. A judicial declaration of the respective rights and duties of the parties is needed to
14 prevent further disputes and controversies over the applicability of Penal Code § 302 to chanting and
15 amplified sound on public streets, so that the parties may conduct themselves accordingly.

16 **Count 2: LAMC § 115.02(g)**

17 **(All Plaintiffs against City Defendants)**

18 46. City Defendants have also relied on LAMC § 115.02(g), which prohibits amplified
19 sounds within 200 feet of a “church,” as a basis for prohibiting amplified sound in the vicinity of HDC’s
20 Kapparot event.

21 47. On information or belief, HDC is not a “church.”

22 48. LAMC § 115.02(g) is unconstitutional on its face because it singles out churches for
23 special treatment while omitting other places of worship such as synagogues and mosques.

24 49. A judicial declaration of the respective rights and duties of the parties is needed so the
25 parties can conduct themselves accordingly. Without such a judicial declaration, there will continue to
26 be disputes and controversies over the legality of chanting and/or using amplified sound while protesting
27 Kapparot events.

County 3: Penal Code § 597(a)

(All Plaintiffs against City Defendants)

50. There is an actual and justiciable controversy between Plaintiffs and Defendants regarding applicability of Penal Code §597 to killing motivated by religion.

51. Plaintiffs believe intentionally killing and discarding chickens without using them for food violates Penal Code §597(a), regardless of whether the motivation is secular or religious. Defendants, on the other hand, believe such conduct either somehow does not fall within the statute or is protected by the state and federal constitutions.

52. Typically when a private person witnesses a misdemeanor and wishes to see charges brought, that person can fill out a private persons arrest form, and a police officer can then forward the information to the City Attorney for possible bringing of charges, pursuant to Penal Code §837.

53. However, in the present situation, police officers mistakenly believe Penal Code §597 is not enforceable against conduct motivated by religion and refuse to even process such a report.

54. At the September 16, 2018 Kapparot event, Plaintiff KARLAN specifically asked police if she could carry out a private persons arrest under Penal Code § 597(a) regarding the killing and discarding of animals by HDC. Police officers responded that they would not allow this.

55. Declaratory relief is needed so City Defendants can base their decision on whether or not to allow Plaintiffs to fill out private persons arrest forms on what the law actually is, and not based on a mistaken belief that the law is not enforceable against conduct motivated by religion.

Count 4: LAMC § 53.67

(All Plaintiffs against City Defendants)

56. There is a concrete and justiciable controversy over constitutional defects with LAMC § 53.67. Defendants apparently believe any conduct motivated by religion is fully protected by the First Amendment, and that even neutral laws of general applicability cannot be enforced against religious conduct.

57. Plaintiffs, on the other hand, believe the only constitutional defect with LAMC § 53.67 is that it specifically targets conduct motivated by religion while exempting all other conduct.

58. California does not have a state law version of the Religious Freedom Restoration Act

1 (“RFRA”), and neutral laws of general applicability therefore only need to survive rational basis review
2 in order to be enforced against conduct motivated by religion.

3 59. As members of the public continue to be subjected to this spectacle of mass cruelty, there
4 will also continue to be confrontations, protests, and confusion over why no enforcement action is being
5 taken despite a duly enacted ordinance being in place prohibiting such acts.

6 60. A judicial declaration of the enforceability of LAMC § 53.67 and what amendment
7 would be necessary to render it constitutional and enforceable is needed to avoid ongoing disputes and
8 controversy over the legality of killing and discarding of thousands of chickens in the streets of Los
9 Angeles each year.

10 **SECOND CAUSE OF ACTION**

11 **Tom Bane Civil Rights Act – Civil Code § 52.1**

12 61. Plaintiffs reallege and incorporate by reference the allegations in each of the preceding
13 paragraphs of this First Amended Complaint.

14 **COUNT 1: JAIN and FERNANDEZ against CITY DEFENDANTS**

15 62. On September 16, 2018, Plaintiffs JAIN and FERNANDEZ were engaging in speech and
16 assembly protected by the First Amendment at 19819 Ventura Blvd., Woodland Hills, California.

17 63. Defendants RAINS, VERNON, and other currently unidentified LAPD officers
18 threatened Plaintiffs with arrest if they made any noise above a conversational volume. However,
19 chanting, yelling, and use of amplified sound are protected forms of free speech.

20 64. Defendants thereby violated Plaintiffs’ free speech rights through unlawful threats of
21 force, violence or coercion.

22 **COUNT 2: JAIN, MAC A’GHOBHAINN, and FERNANDEZ against HDC DEFENDANTS**

23 65. On information or belief, on September 16, 2018, agents of HDC Defendants sprayed
24 Plaintiff JAIN with some type of liquid over the fence in the alley where Plaintiffs were engaged in
25 peaceful protesting and picketing.

26 66. Plaintiffs MAC A’GHOBHAINN and FERNANDEZ were present in the alley when the
27 spraying took place and were almost sprayed themselves.

28 67. Police officers stationed in the alley yelled for HDC Defendants and/or their agents on

1 the other side of the fence to “knock off the spraying.”

2 68. On information or belief, HDC Defendants intended to and did cause harmful offensive
3 contact with Plaintiff JAIN in an attempt to stop all Plaintiffs through force or threat of force from
4 engaging in First Amendment protected picketing and assembly.

5 69. HDC Defendants thereby violated Plaintiffs’ free speech rights through unlawful threats
6 of force, violence or coercion.

7 **THIRD CAUSE OF ACTION**

8 **Ralph Act – Civil Code §51.7**

9 70. Plaintiffs reallege and incorporate by reference the allegations in each of the preceding
10 paragraphs of this First Amended Complaint.

11 71. The Ralph Act (Cal. Civil Code §51.7) provides protection against violence or
12 intimidation by threat of violence because of political affiliation.

13 72. Defendants committed violence against and/or threatened violence against Plaintiffs
14 because of their political affiliation, to wit, their identification as animal rights activists who are opposed
15 to killing and discarding chickens for Kapparot rituals.

16 73. Defendants acted outrageously, violently, wantonly, and with malice and oppression, and
17 Plaintiffs are entitled to punitive damages.

18 **COUNT 1: JAIN and FERNANDEZ against CITY DEFENDANTS**

19 74. On September 16, 2018, Plaintiffs JAIN and FERNANDEZ were engaging in speech and
20 assembly protected by the First Amendment at 19819 Ventura Blvd., Woodland Hills, California.

21 75. Defendants RAINS, VERNON, and other currently unidentified LAPD officers
22 threatened Plaintiffs with arrest if they made any noise above a conversational volume. However,
23 chanting, yelling, and use of amplified sound are protected forms of free speech.

24 76. An unidentified LAPD officer also stated that amplified sound by HDC Defendants was
25 allowed because it was part of their “freedom of religion,” but that Plaintiffs could not use amplified
26 sound in the same area.

27 **COUNT 2: JAIN, MAC A’GHOBHAINN, and FERNANDEZ against HDC DEFENDANTS**

28 77. On information or belief, on September 16, 2018, agents of HDC Defendants sprayed

1 Plaintiff JAIN with some type of liquid over the fence in the alley where Plaintiffs were engaged in
2 peaceful protesting and picketing.

3 78. Plaintiffs MAC A'GHOBHAINN and FERNANDEZ were present in the alley when the
4 spraying took place and were almost sprayed themselves.

5 79. Police officers stationed in the alley yelled for HDC Defendants and/or their agents on
6 the other side of the fence to "knock off the spraying."

7 80. On information or belief, HDC Defendants intended to and did cause harmful offensive
8 contact with Plaintiff JAIN in an attempt to stop all Plaintiffs through force or threat of force from
9 engaging in First Amendment protected picketing and assembly, due to their identification as animal
10 rights activists opposed to killing and discarding chickens for Kapparot.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiffs pray for judgment against Defendants as follows:

13 1. For general, special and punitive damages to be proven at trial for violation of Plaintiffs'
14 civil rights;

15 2. For declaratory relief that there is no exception to California Penal Code § 597(a) that
16 would provide legal justification for killing animals solely for a religious ritual when the animals are
17 discarded instead of used for food;

18 3. For declaratory relief that LAMC § 53.67 is unconstitutional on its face due to
19 specifically targeting conduct motivated by religion, and not because there is any recognized First
20 Amendment right to engage in animal sacrifice;

21 4. For declaratory and injunctive relief enjoining Defendants from arresting or threatening
22 to arrest Plaintiffs or any members of the public for chanting or using sound amplification as part of
23 peaceful expressive activity;

24 5. For declaratory and injunctive relief that LAMC § 115.02(g) is unconstitutional on its
25 face and as applied;

26 6. For a statutory penalty of \$25,000 for each violation of Civil Code §§51.7 and 52.1;

27 7. For attorneys' fees as provided by, *inter alia*, Code Civ. Proc. § 1021.5 and Civil Code §
28 52, and for costs of suit incurred herein.

9. For such other and further relief as the Court deems just and proper.

By:

By:

By:

VERIFIED COMPLAINT

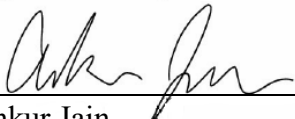
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2 **VERIFICATION**

3 I, Ankur Jain, am a Plaintiff in the above Complaint and am familiar with its contents. The same
4 is true of my own personal knowledge, except as to those matters alleged on information or belief, and
5 as to those matters, I believe them to be true.

6 I declare under penalty of perjury the foregoing is true and correct.

7
8 Dated: July 12, 2019

By:


Ankur Jain

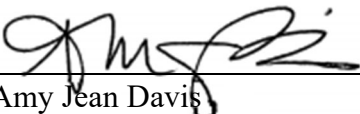
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11 **VERIFICATION**

12 I, Amy Jean Davis, am a Plaintiff in the above Complaint and am familiar with its contents. The
13 same is true of my own personal knowledge, except as to those matters alleged on information or belief,
14 and as to those matters, I believe them to be true.

15 I declare under penalty of perjury the foregoing is true and correct.

16
17 Dated: July 12, 2019

By:


Amy Jean Davis

18
19 **VERIFICATION**

20 I, Lisa Karlan, am a Plaintiff in the above Complaint and am familiar with its contents. The same
21 is true of my own personal knowledge, except as to those matters alleged on information or belief, and
22 as to those matters, I believe them to be true.

23 I declare under penalty of perjury the foregoing is true and correct.

24
25
26 Dated: July 12, 2019

By:


Lisa Karlan